

Calendar No. 699

103D CONGRESS  
2D SESSION

**S. 2297**

[Report No. 103-388]

**A BILL**

To facilitate obtaining foreign-located antitrust evidence by authorizing the Attorney General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, antitrust evidence to foreign antitrust authorities on a reciprocal basis; and for other purposes.

SEPTEMBER 30 (legislative day, SEPTEMBER 12), 1994

Reported with an amendment

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**IN THE SENATE OF THE UNITED STATES**

JULY 19 (legislative day, JULY 11), 1994

Mr. METZENBAUM (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. BIDEN, Mr. LEAHY, Mr. SIMON, Mr. SIMPSON, Mr. GRASSLEY, Mr. SPECTER, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 30 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. BIDEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**A BILL**

To facilitate obtaining foreign-located antitrust evidence by authorizing the Attorney General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, antitrust evidence to foreign antitrust authorities on a reciprocal basis; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “International Antitrust  
 5 Enforcement Assistance Act of 1994”.

6 **SEC. 2. DISCLOSURE TO A FOREIGN ANTITRUST AUTHOR-**  
 7 **ITY OF ANTITRUST EVIDENCE.**

8 Subject to section 8 and except as provided in section  
 9 5, the Attorney General of the United States and the Fed-  
 10 eral Trade Commission may provide, in accordance with  
 11 an antitrust mutual assistance agreement in effect with  
 12 a foreign antitrust authority, antitrust evidence to the for-  
 13 eign antitrust authority to assist the foreign antitrust au-  
 14 thority—

15 (1) to determine whether a person has violated  
 16 or is about to violate any of the foreign antitrust  
 17 laws administered or enforced by the foreign anti-  
 18 trust authority, or

19 (2) to enforce any of such foreign antitrust  
 20 laws.

21 **SEC. 3. INVESTIGATIONS TO ASSIST A FOREIGN ANTITRUST**  
 22 **AUTHORITY IN OBTAINING ANTITRUST EVI-**  
 23 **DENCE.**

24 (a) ~~GENERAL AUTHORITY.~~—In accordance with an  
 25 antitrust mutual assistance agreement in effect with a for-

1 eign antitrust authority, subject to section 8, and except  
 2 as provided in section 5, the Attorney General may, using  
 3 the authority of the Attorney General to investigate pos-  
 4 sible violations of the Federal antitrust laws, conduct in-  
 5 vestigations to obtain antitrust evidence relating to a vio-  
 6 lation of the foreign antitrust laws administered or en-  
 7 forced by the foreign antitrust authority, and may provide  
 8 such antitrust evidence to the foreign antitrust authority,  
 9 to assist the foreign antitrust authority—

10           (1) to determine whether a person has violated  
 11           or is about to violate any of such foreign antitrust  
 12           laws, or

13           (2) to enforce any of such foreign antitrust  
 14           laws.

15 Such investigations may be conducted, and such antitrust  
 16 evidence may be provided, without regard to whether the  
 17 conduct investigated violates any of the Federal antitrust  
 18 laws.

19       (b) CONFORMING AMENDMENTS.—The Antitrust  
 20 Civil Process Act (15 U.S.C. 1311 et seq) is amended—

21           (1) in section 2—

22                   (A) in subsection (d)—

23                           (i) by striking “or any” and inserting  
 24                           “; any”, and

1                   (ii) by inserting before the period “  
2                   or any of the foreign antitrust laws”, and  
3                   (B) by adding at the end the following new  
4                   subsection:

5           “(k) The term ‘foreign antitrust laws’ has the mean-  
6   ing given such term in section 12 of the International  
7   Antitrust Enforcement Assistance Act of 1994.”, and

8           (2) in the first sentence of section 3(a)—

9                   (A) by inserting “or to an investigation au-  
10                  thorized by section 3(a) of the International  
11                  Antitrust Enforcement Assistance Act of 1994”  
12                  after “investigation”, and

13                  (B) by inserting “by the United States”  
14                  after “proceeding”.

15   **SEC. 4. JURISDICTION OF THE DISTRICT COURTS OF THE**  
16                   **UNITED STATES.**

17           (a) ~~AUTHORITY OF THE DISTRICT COURTS.~~—On the  
18   application of the Attorney General made in accordance  
19   with an antitrust mutual assistance agreement in effect  
20   with a foreign antitrust authority, the United States dis-  
21   trict court for the district in which a person resides, is  
22   found, or transacts business may order such person to give  
23   testimony or a statement, or to produce a document or  
24   other thing, to the Attorney General to assist the foreign  
25   antitrust authority that is a party to such agreement—

1           (1) to determine whether a person has violated  
2           or is about to violate any of the foreign antitrust  
3           laws administered or enforced by the foreign anti-  
4           trust authority, or

5           (2) to enforce any of such foreign antitrust  
6           laws.

7       (b) CONTENTS OF ORDER.—(1) An order issued  
8       under subsection (a) may direct that testimony or a state-  
9       ment be given, or a document or other thing be produced,  
10      to a person who shall be recommended by the Attorney  
11      General and appointed by the court. A person so appointed  
12      shall have power to administer any necessary oath and to  
13      take such testimony or such statement.

14      (2) An order issued under subsection (a) may pre-  
15      scribe the practice and procedure for taking testimony and  
16      statements. Such practice and procedure may be in whole  
17      or in part the practice and procedure of the foreign state,  
18      or the regional economic integration organization, rep-  
19      resented by the foreign antitrust authority with respect  
20      to which the Attorney General requests such order. To the  
21      extent such order does not prescribe otherwise, any testi-  
22      mony and statements required to be taken shall be taken,  
23      and any documents and other things required to be pro-  
24      duced shall be produced, in accordance with the Federal  
25      Rules of Civil Procedure.

1       (c) RIGHTS AND PRIVILEGES PRESERVED.—A person  
 2 may not be compelled under an order issued under sub-  
 3 section (a) to give testimony or a statement, or to produce  
 4 a document or other thing, in violation of any legally appli-  
 5 cable right or privilege.

6       (d) VOLUNTARY CONDUCT.—This section does not  
 7 preclude a person in the United States from voluntarily  
 8 giving testimony or a statement, or producing a document  
 9 or other thing, in any manner acceptable to such person  
 10 for use in an investigation by a foreign antitrust authority.

11 **SEC. 5. LIMITATIONS ON AUTHORITY.**

12       Sections 2, 3, and 4 shall not apply with respect to  
 13 the following antitrust evidence:

14           (1) Antitrust evidence that is received by the  
 15 Attorney General or the Commission under section  
 16 7A of the Clayton Act (15 U.S.C. 18a), as added by  
 17 title II of the Hart-Scott-Rodino Antitrust Improve-  
 18 ments Act of 1976. Nothing in this paragraph shall  
 19 affect the ability of the Attorney General or the  
 20 Commission to disclose to a foreign antitrust author-  
 21 ity antitrust evidence that is obtained otherwise than  
 22 under such section 7A.

23           (2) Antitrust evidence that is matter occurring  
 24 before a grand jury and with respect to which disclo-  
 25 sure is prevented by Federal law, except that for

1 purposes of this section and Rule 6(e)(3)(c)(i) of the  
 2 Federal Rules of Criminal Procedure, a judicial pro-  
 3 ceeding includes a judicial or administrative proceed-  
 4 ing of a foreign state or a regional economic integra-  
 5 tion organization under any of the foreign antitrust  
 6 laws of such foreign state or such organization.

7 (3) Antitrust evidence that is specifically au-  
 8 thorized under criteria established by Executive  
 9 Order 12356, or any successor to such order, to be  
 10 kept secret in the interest of national defense or for-  
 11 eign policy, and—

12 (A) that is classified pursuant to such  
 13 order or such successor, or

14 (B) with respect to which a determination  
 15 of classification is pending under such order or  
 16 such successor.

17 (4) Antitrust evidence that is classified under  
 18 section 142 of the Atomic Energy Act of 1954 (42  
 19 U.S.C. 2162).

20 **SEC. 6. DISCLOSURE OF ANTITRUST EVIDENCE.**

21 Section 4 of the Antitrust Civil Process Act (15  
 22 U.S.C. 1313) shall not apply to prevent the Attorney Gen-  
 23 eral from providing to a foreign antitrust authority anti-  
 24 trust evidence in accordance with an antitrust mutual as-



1 sistance agreement in effect under this Act and in accord-  
 2 ance with the other requirements of this Act.

3 **SEC. 7. PUBLICATION REQUIREMENTS APPLICABLE TO**  
 4 **ANTITRUST MUTUAL ASSISTANCE AGREE-**  
 5 **MENTS.**

6 (a) PUBLICATION OF PROPOSED ANTITRUST MU-  
 7 TUAL ASSISTANCE AGREEMENTS.—Not less than 45 days  
 8 before entering into an antitrust mutual assistance agree-  
 9 ment and after consultation with the Commission, the At-  
 10 torney General shall publish in the Federal Register—

11 (1) the proposed text of such agreement and  
 12 any modification to such proposed text, and

13 (2) a request for public comment with respect  
 14 to such text or such modification, as the case may  
 15 be.

16 (b) PUBLICATION OF PROPOSED AMENDMENTS TO  
 17 ANTITRUST MUTUAL ASSISTANCE AGREEMENTS IN EF-  
 18 FECT.—Not less than 45 days before entering into an  
 19 agreement that makes an amendment to an antitrust mu-  
 20 tual assistance agreement in effect under this Act and  
 21 after consultation with the Commission, the Attorney Gen-  
 22 eral shall publish in the Federal Register—

23 (1) the proposed text of such amendment, and

24 (2) a request for public comment with respect  
 25 to such amendment.

1       ~~(c) PUBLICATION OF ANTITRUST MUTUAL ASSIST-~~  
 2       ~~ANCE AGREEMENTS ENTERED INTO AND OF AMEND-~~  
 3       ~~MENTS TO SUCH AGREEMENTS.—Not later than 30 days~~  
 4       ~~after entering into an antitrust mutual assistance agree-~~  
 5       ~~ment, or an agreement that makes an amendment to an~~  
 6       ~~antitrust mutual assistance agreement in effect under this~~  
 7       ~~Act, the Attorney General shall publish in the Federal~~  
 8       ~~Register—~~

9               ~~(1) the text of the antitrust mutual assistance~~  
 10       ~~agreement or of such amendment, as the case may~~  
 11       ~~be, and~~

12               ~~(2) in the case of an agreement that makes~~  
 13       ~~such amendment, a notice containing—~~

14                       ~~(A) a statement of the fact that such~~  
 15       ~~agreement was entered into,~~

16                       ~~(B) citations to the provisions of the Fed-~~  
 17       ~~eral Register that contain the text of the~~  
 18       ~~amendment and of the antitrust mutual assist-~~  
 19       ~~ance agreement that is so amended, and~~

20                       ~~(C) a description of the manner in which~~  
 21       ~~a copy of the antitrust mutual assistance agree-~~  
 22       ~~ment, as so amended, may be obtained from the~~  
 23       ~~Attorney General.~~

24       ~~(d) CONDITION FOR VALIDITY.—An antitrust mutual~~  
 25       ~~assistance agreement, or an agreement that makes an~~

1 amendment to an antitrust mutual assistance agreement,  
 2 entered into in violation of subsection (a) or (b) shall not  
 3 be considered to be entered into under the authority of  
 4 this Act.

5 **SEC. 8. IMPLEMENTATION OF ANTITRUST MUTUAL ASSIST-**  
 6 **ANCE AGREEMENTS.**

7 (a) DETERMINATIONS.—The Attorney General may  
 8 conduct an investigation under section 3, and the Attorney  
 9 General or the Commission may provide antitrust evidence  
 10 to a foreign antitrust authority, under an antitrust mutual  
 11 assistance agreement in effect under this Act only if the  
 12 Attorney General or the Commission, as the case may be,  
 13 determines in the particular instance in which such inves-  
 14 tigation or evidence is requested that—

15 (1) the foreign antitrust authority—

16 (A) will satisfy the assurances, terms, and  
 17 conditions required by subparagraphs (A), (B),  
 18 and (D) of section 12(2), and

19 (B) is capable of complying with and will  
 20 comply with the confidentiality requirements  
 21 applicable under such agreement to the re-  
 22 quested antitrust evidence,

23 (2) providing the requested antitrust evidence  
 24 will not violate section 5, and

1           (3) conducting such investigation, or providing  
2           the requested antitrust evidence, as the case may be,  
3           is consistent with the public interest of the United  
4           States, taking into consideration, among other fac-  
5           tors, whether the foreign state, or the regional eco-  
6           nomic integration organization, represented by the  
7           foreign antitrust authority holds any proprietary in-  
8           terest that could benefit or otherwise be affected by  
9           such investigation or by the provision of such anti-  
10          trust evidence.

11          (b) LIMITATION ON DISCLOSURE OF CERTAIN ANTI-  
12          TRUST EVIDENCE.—Neither the Attorney General nor the  
13          Commission may disclose in violation of an antitrust mu-  
14          tual assistance agreement any antitrust evidence received  
15          under such agreement, except that such agreement may  
16          not prevent the disclosure of such antitrust evidence to  
17          a defendant in an action or proceeding brought by the At-  
18          torney General or the Commission for a violation of any  
19          of the Federal antitrust laws if such disclosure would oth-  
20          erwise be required by Federal law.

21          (c) REQUIRED DISCLOSURE OF NOTICE RE-  
22          CEIVED.—If the Attorney General or the Commission re-  
23          ceives a notice described in section 12(2)(G), the Attorney  
24          General or the Commission, as the case may be, shall

1 transmit such notice to the person that provided the evi-  
 2 dence with respect to which such notice is received.

3 **SEC. 9. LIMITATIONS ON JUDICIAL REVIEW**

4 (a) DETERMINATIONS.—Determinations made under  
 5 section 8(a) shall not be subject to judicial review.

6 (b) CITATIONS TO AND DESCRIPTIONS OF ANTI-  
 7 TRUST LAWS.—Whether an antitrust mutual assistance  
 8 agreement satisfies the requirements specified in section  
 9 12(2)(C) shall not be subject to judicial review.

10 **SEC. 10. SUPPLEMENTATION AND PRESERVATION OF AU-**  
 11 **THORITY.**

12 (a) SUPPLEMENTAL AUTHORITY.—The authority  
 13 provided by this Act is in addition to, and not in lieu of,  
 14 any other authority vested in the Attorney General, the  
 15 Commission, or any other officer of the United States.

16 (b) AUTHORITY PRESERVED.—This Act does not  
 17 modify or affect the allocation of responsibility between  
 18 the Attorney General and the Commission for the enforce-  
 19 ment of the Federal antitrust laws.

20 **SEC. 11. REPORT TO THE CONGRESS.**

21 In the 30-day period beginning 3 years after the date  
 22 of the enactment of this Act and after consultation with  
 23 the Commission, the Attorney General shall submit, to the  
 24 Speaker of the House of Representatives and the Presi-  
 25 dent pro tempore of the Senate, a report—

1           (1) describing how the operation of this Act has  
2           affected the enforcement of the Federal antitrust  
3           laws,

4           (2) the extent to which foreign antitrust au-  
5           thorities have complied with the confidentiality re-  
6           quirements applicable under antitrust mutual assist-  
7           ance agreements in effect under this Act,

8           (3) the number and identities of the foreign  
9           antitrust authorities that have entered into such  
10          agreements,

11          (4) the identity of each foreign state, and each  
12          regional economic integration organization, that has  
13          in effect a law similar to this Act,

14          (5) the approximate number of requests made  
15          by the Attorney General and the Commission under  
16          such agreements to foreign antitrust authorities for  
17          antitrust investigations and for antitrust evidence,

18          (6) the approximate number of requests made  
19          by foreign antitrust authorities under such agree-  
20          ments to the Attorney General and the Commission  
21          for investigations under section 3 and for antitrust  
22          evidence, and

23          (7) a description of any significant problems or  
24          concerns of which the Attorney General is aware  
25          with respect to the operation of this Act.

1 **SEC. 12. DEFINITIONS.**

2 For purposes of this Act:

3 (1) The term “antitrust evidence” means infor-  
4 mation, testimony, statements, documents, or other  
5 things obtained in anticipation of, or during the  
6 course of, an investigation or proceeding under any  
7 of the Federal antitrust laws or any of the foreign  
8 antitrust laws.

9 (2) The term “antitrust mutual assistance  
10 agreement” means a written agreement, or written  
11 memorandum of understanding, that is entered be-  
12 tween the Attorney General and a foreign antitrust  
13 authority for the purpose of conducting investiga-  
14 tions under section 3, or for providing antitrust evi-  
15 dence, on a reciprocal basis and that includes the  
16 following:

17 (A) An assurance that the foreign anti-  
18 trust authority will provide to the Attorney  
19 General or the Commission assistance that is  
20 comparable in scope to the assistance the Attor-  
21 ney General or the Commission, as the case  
22 may be, provides under such agreement or such  
23 memorandum.

24 (B) An assurance that the foreign anti-  
25 trust authority is subject to laws and proce-  
26 dures that are adequate to maintain the con-

1        confidentiality of antitrust evidence that may be re-  
2        ceived under section 2, 3, or 4 and will give  
3        protection to antitrust evidence received under  
4        such section that is not less than the protection  
5        provided under the laws of the United States to  
6        such antitrust evidence.

7            (C) Citations to, and brief descriptions of,  
8        the laws (including treaties, statutes, executive  
9        orders, and regulations) of the United States,  
10       and the laws (including treaties, statutes, exec-  
11       utive orders, and regulations) of the foreign  
12       state, or the regional economic integration orga-  
13       nization, represented by the foreign antitrust  
14       authority, that protect the confidentiality of  
15       antitrust evidence that may be provided under  
16       such agreement or such memorandum. Such ci-  
17       tations and such descriptions shall include the  
18       enforcement mechanisms and penalties applica-  
19       ble under such laws.

20            (D) Terms and conditions that specifically  
21        prohibit using antitrust evidence received under  
22        such agreement or such memorandum, for any  
23        purpose other than the administration or en-  
24        forcement of the foreign antitrust laws involved.



1           ~~(E)~~ An assurance that antitrust evidence  
2           received under section 2, 3, or 4 from the At-  
3           torney General or the Commission, and all cop-  
4           ies of such evidence, in the possession or control  
5           of the foreign antitrust authority will be re-  
6           turned to the Attorney General or the Commis-  
7           sion, respectively, at the conclusion of the for-  
8           eign investigation or proceeding with respect to  
9           which such evidence was so received.

10           ~~(F)~~ Terms and conditions that specifically  
11           provide that such agreement or such memoran-  
12           dum will be terminated if—

13                   (i) the confidentiality required under  
14                   such agreement or such memorandum is  
15                   violated with respect to antitrust evidence,  
16                   and

17                   (ii) adequate action is not taken both  
18                   to minimize any harm resulting from the  
19                   violation and to ensure that such confiden-  
20                   tiality is not violated again.

21           ~~(G)~~ Terms and conditions that specifically  
22           provide that if the confidentiality required  
23           under such agreement or such memorandum is  
24           violated by the foreign antitrust authority with

1       respect to antitrust evidence, notice of the viola-  
2       tion will be given—

3               (i) by the foreign antitrust authority  
4               promptly to the Attorney General or the  
5               Commission with respect to antitrust evi-  
6               dence provided by the Attorney General or  
7               the Commission, respectively, and

8               (ii) by the Attorney General or the  
9               Commission to the person (if any) that  
10              provided such evidence to the Attorney  
11              General or the Commission.

12       (3) The term “Attorney General” means the  
13       Attorney General of the United States.

14       (4) The term “Commission” means the Federal  
15       Trade Commission.

16       (5) The term “Federal antitrust laws” has the  
17       meaning given the term “antitrust laws” in sub-  
18       section (a) of the first section of the Clayton Act (15  
19       U.S.C. 12(a)) but also includes section 5 of the Fed-  
20       eral Trade Commission Act (15 U.S.C. 45) to the  
21       extent that such section 5 applies to unfair methods  
22       of competition.

23       (6) The term “foreign antitrust authority”  
24       means a governmental entity of a foreign state or of  
25       a regional economic integration organization that is

1       vested by such state or such organization with au-  
2       thority to enforce the foreign antitrust laws of such  
3       state or such organization.

4           (7) The term “foreign antitrust laws” means  
5       the laws of a foreign state, or of a regional economic  
6       integration organization, that are substantially simi-  
7       lar to any of the Federal antitrust laws and that  
8       prohibit conduct similar to conduct prohibited under  
9       the Federal antitrust laws.

10          (8) The term “person” has the meaning given  
11       such term in subsection (a) of the first section of the  
12       Clayton Act (15 U.S.C. 12(a)).

13          (9) The term “regional economic integration or-  
14       ganization” means an organization that is con-  
15       stituted by, and composed of, foreign states and in  
16       which such foreign states have vested authority to  
17       make decisions binding on such foreign states.

18   **SEC. 13. AUTHORITY TO RECEIVE REIMBURSEMENTS.**

19       The Attorney General and the Commission are au-  
20       thorized to receive from a foreign state or a regional eco-  
21       nomic integration organization reimbursement in cash or  
22       in kind for the costs incurred by the Attorney General or  
23       the Commission, respectively, to conduct investigations  
24       under section 3 or provide antitrust evidence under a mu-  
25       tual assistance agreement entered into with the foreign

1 antitrust authority that represents such foreign state or  
 2 such organization.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “International Antitrust*  
 5 *Enforcement Assistance Act of 1994”.*

6 **SEC. 2. DISCLOSURE TO A FOREIGN ANTITRUST AUTHOR-**  
 7 **ITY OF ANTITRUST EVIDENCE.**

8 *Subject to section 8, except as provided in section 5,*  
 9 *and in accordance with an antitrust mutual assistance*  
 10 *agreement, the Attorney General and the Federal Trade*  
 11 *Commission may provide antitrust evidence to a foreign*  
 12 *antitrust authority to assist the foreign antitrust author-*  
 13 *ity—*

14 *(1) in determining whether a person has violated*  
 15 *or is about to violate any of the foreign antitrust laws*  
 16 *administered or enforced by the foreign antitrust au-*  
 17 *thority; or*

18 *(2) in enforcing any of such foreign antitrust*  
 19 *laws.*

20 **SEC. 3. INVESTIGATIONS TO ASSIST A FOREIGN ANTITRUST**  
 21 **AUTHORITY IN OBTAINING ANTITRUST EVI-**  
 22 **DENCE.**

23 *(a) AUTHORITY OF THE ATTORNEY GENERAL.—*

1           (1) *REQUEST.*—Requests for assistance from a  
2           foreign antitrust authority pursuant to this section  
3           shall be made to the Attorney General.

4           (2) *INVESTIGATION.*—Subject to section 8, except  
5           as provided in section 5, and in accordance with an  
6           antitrust mutual assistance agreement, the Attorney  
7           General may, after consultation with the Commission,  
8           use antitrust investigative authority to conduct anti-  
9           trust investigations to obtain antitrust evidence relat-  
10          ing to a violation of the foreign antitrust laws admin-  
11          istered or enforced by a foreign antitrust authority,  
12          and may provide such antitrust evidence to the for-  
13          eign antitrust authority, to assist the foreign anti-  
14          trust authority—

15                (A) in determining whether a person has  
16                violated or is about to violate any of such foreign  
17                antitrust laws; or

18                (B) in enforcing any of such foreign anti-  
19                trust laws.

20          (3) *FEDERAL ANTITRUST LAWS.*—An investiga-  
21          tion under this section may be conducted, and such  
22          antitrust evidence may be provided, without regard to  
23          whether the conduct investigated violates any of the  
24          Federal antitrust laws.

25          (b) *AUTHORITY OF THE COMMISSION.*—

1           (1) *IN GENERAL.*—After consultation with the  
 2           Commission, and consistent with section 10(b), the  
 3           Attorney General may refer to the Commission a re-  
 4           quest for assistance under this section from a foreign  
 5           antitrust authority.

6           (2) *INVESTIGATION.*—Upon referral under para-  
 7           graph (1), the Commission may, subject to section 8  
 8           and except as provided in section 5, use its investiga-  
 9           tive authority under the Federal Trade Commission  
 10          Act (15 U.S.C. 41 et seq.) to conduct antitrust inves-  
 11          tigations in the same manner and of the same scope  
 12          as those described under subsection (a).

13          (c) *CONFORMING AMENDMENTS.*—

14           (1) *ANTITRUST CIVIL PROCESS ACT.*—The Anti-  
 15          trust Civil Process Act (15 U.S.C. 1311 et seq) is  
 16          amended—

17           (A) in section 2—

18           (i) in subsection (d)—

19           (I) by striking “or any” and inserting  
 20           “, any”; and

21           (II) by inserting before the semicolon  
 22           “, or any of the foreign antitrust laws”; and

23           (ii) by adding at the end the following new  
 24          subsection:

1       “(k) The term ‘foreign antitrust laws’ has the meaning  
 2       given such term in section 12 of the International Antitrust  
 3       Enforcement Assistance Act of 1994.”; and

4               (B) in the first sentence of section 3(a)—

5                       (i) by inserting “or to an investigation au-  
 6                       thorized by section 3(a) of the International  
 7                       Antitrust Enforcement Assistance Act of 1994”  
 8                       after “investigation”; and

9                       (ii) by inserting “by the United States”  
 10                      after “proceeding”.

11               (2) *FEDERAL TRADE COMMISSION ACT.*—Section  
 12       6(h) of the Federal Trade Commission Act (15 U.S.C.  
 13       46(h)) is amended by striking the period after “advis-  
 14       able” and inserting “and to conduct investigations in  
 15       accordance with the International Antitrust Enforce-  
 16       ment Assistance Act.”.

17       **SEC. 4. JURISDICTION OF THE DISTRICT COURTS OF THE**  
 18               **UNITED STATES.**

19               (a) *AUTHORITY OF THE DISTRICT COURTS.*—On the  
 20       application of the Attorney General made in accordance  
 21       with an antitrust mutual assistance agreement, the United  
 22       States district court for the district in which a person re-  
 23       sides, is found, or transacts business may order such person  
 24       to give testimony or a statement, or to produce a document

1 *or other thing, to the Attorney General to assist the foreign*  
 2 *antitrust authority that is covered by the agreement—*

3 *(1) in determining whether a person has violated*  
 4 *or is about to violate any of the foreign antitrust laws*  
 5 *administered or enforced by the foreign antitrust au-*  
 6 *thority; or*

7 *(2) in enforcing any of such foreign antitrust*  
 8 *laws.*

9 *(b) CONTENTS OF ORDER.—*

10 *(1) IN GENERAL.—An order issued under sub-*  
 11 *section (a) may direct that testimony or a statement*  
 12 *be given, or a document or other thing be produced,*  
 13 *to a person who shall be recommended by the Attor-*  
 14 *ney General and appointed by the court.*

15 *(2) POWER OF APPOINTEE.—A person appointed*  
 16 *in an order under paragraph (1) shall have power to*  
 17 *administer any necessary oath and to take such testi-*  
 18 *mony or such statement.*

19 *(3) PRACTICE AND PROCEDURE.—(A) An order*  
 20 *issued under subsection (a) may prescribe the practice*  
 21 *and procedure for taking testimony and statements.*

22 *(B) Such practice and procedure may be in*  
 23 *whole or in part the practice and procedure of the for-*  
 24 *ign state, or the regional economic integration orga-*  
 25 *nization, represented by the foreign antitrust author-*



1        *ity with respect to which the Attorney General re-*  
 2        *quests such order.*

3            *(C) To the extent such order does not prescribe*  
 4        *otherwise, any testimony and statements required to*  
 5        *be taken shall be taken, and any documents and other*  
 6        *things required to be produced shall be produced, in*  
 7        *accordance with the Federal Rules of Civil Procedure.*

8        *(c) RIGHTS AND PRIVILEGES PRESERVED.—A person*  
 9        *may not be compelled under an order issued under sub-*  
 10       *section (a) or in connection with an investigation author-*  
 11       *ized by section 3 to give testimony or a statement, or to*  
 12       *produce a document or other thing, in violation of any le-*  
 13       *gally applicable right or privilege.*

14       *(d) VOLUNTARY CONDUCT.—This section does not pre-*  
 15       *clude a person in the United States from voluntarily giving*  
 16       *testimony or a statement, or producing a document or other*  
 17       *thing, in any manner acceptable to such person for use in*  
 18       *an investigation by a foreign antitrust authority.*

19       **SEC. 5. LIMITATIONS ON AUTHORITY.**

20       *Sections 2, 3, and 4 shall not apply with respect to*  
 21       *the following antitrust evidence:*

22            *(1) Antitrust evidence that is received by the At-*  
 23        *torney General or the Commission under section 7A*  
 24        *of the Clayton Act (15 U.S.C. 18a), as added by title*  
 25        *II of the Hart-Scott-Rodino Antitrust Improvements*

1     *Act of 1976. Nothing in this paragraph shall affect*  
2     *the ability of the Attorney General or the Commission*  
3     *to disclose to a foreign antitrust authority antitrust*  
4     *evidence that is obtained otherwise than under such*  
5     *section 7A.*

6             *(2) Antitrust evidence that is matter occurring*  
7     *before a grand jury and with respect to which disclo-*  
8     *sure is prevented by Federal law, except as may be*  
9     *directed by a court pursuant to Rule 6(e)(3)(C)(i) of*  
10    *the Federal Rules of Criminal Procedure. For pur-*  
11    *poses of this section, disclosure preliminary to or in*  
12    *connection with a judicial proceeding shall include*  
13    *disclosure to a foreign antitrust authority for the pur-*  
14    *poses provided in section 2.*

15            *(3) Antitrust evidence that is specifically author-*  
16    *ized under criteria established by Executive Order*  
17    *12356, or any successor to such order, to be kept se-*  
18    *cret in the interest of national defense or foreign pol-*  
19    *icy, and—*

20                 *(A) that is classified pursuant to such order*  
21                 *or such successor; or*

22                 *(B) with respect to which a determination*  
23                 *of classification is pending under such order or*  
24                 *such successor.*

1           (4) Antitrust evidence that is classified under  
 2           section 142 of the Atomic Energy Act of 1954 (42  
 3           U.S.C. 2162).

4   **SEC. 6. DISCLOSURE OF ANTITRUST EVIDENCE.**

5           Neither section 4 of the Antitrust Civil Process Act (15  
 6   U.S.C. 1313) nor section 6(f) or 21 of the Federal Trade  
 7   Commission Act (15 U.S.C. 46, 57b–2) shall apply to pre-  
 8   vent the Attorney General or the Commission from provid-  
 9   ing to a foreign antitrust authority antitrust evidence in  
 10   accordance with an antitrust mutual assistance agreement  
 11   in effect under this Act and in accordance with the other  
 12   requirements of this Act.

13   **SEC. 7. PUBLICATION REQUIREMENTS APPLICABLE TO**  
 14                   **ANTITRUST MUTUAL ASSISTANCE AGREE-**  
 15                   **MENTS.**

16           (a) PUBLICATION OF PROPOSED ANTITRUST MUTUAL  
 17   ASSISTANCE AGREEMENTS.—Not less than 45 days before  
 18   entering into an antitrust mutual assistance agreement, the  
 19   Attorney General, with the concurrence of the Commission,  
 20   shall publish in the Federal Register—

- 21           (1) the proposed text of such agreement and any  
 22           modification to such proposed text; and  
 23           (2) a request for public comment with respect to  
 24           such text or such modification, as the case may be.

1       (b) *PUBLICATION OF PROPOSED AMENDMENTS TO*  
 2 *ANTITRUST MUTUAL ASSISTANCE AGREEMENTS IN EF-*  
 3 *FECTION.—Not less than 45 days before entering into an agree-*  
 4 *ment that makes an amendment to an antitrust mutual as-*  
 5 *sistance agreement in effect under this Act, the Attorney*  
 6 *General, with the concurrence of the Commission, shall pub-*  
 7 *lish in the Federal Register—*

8               (1) *the proposed text of such amendment, and*

9               (2) *a request for public comment with respect to*  
 10 *such amendment.*

11       (c) *PUBLICATION OF ANTITRUST MUTUAL ASSISTANCE*  
 12 *AGREEMENTS ENTERED INTO, AND AMENDMENTS TO AND*  
 13 *TERMINATIONS OF, SUCH AGREEMENTS.—*

14               (1) *IN GENERAL.—Not later than 30 days*  
 15 *after—*

16                       (A) *entering into an antitrust mutual as-*  
 17 *sistance agreement;*

18                       (B) *entering into an agreement that makes*  
 19 *an amendment to an antitrust mutual assistance*  
 20 *agreement; or*

21                       (C) *terminating an antitrust mutual assist-*  
 22 *ance agreement,*

23       *the Attorney General, with the concurrence of the*  
 24 *Commission, shall publish in the Federal Register a*

1       *notice containing the information described in para-*  
 2       *graph (2).*

3               (2) *CONTENTS OF NOTICE.*—A notice under this  
 4       *subsection shall contain—*

5                       (A) *the text of the antitrust mutual assist-*  
 6                       *ance agreement or of such amendment, or the*  
 7                       *fact and any terms of termination as the case*  
 8                       *may be; and*

9                       (B) *in the case of an agreement that makes such*  
 10       *amendment, a notice containing—*

11                               (i) *a statement of the fact that such agree-*  
 12                               *ment was entered into;*

13                               (ii) *citations to the provisions of the Fed-*  
 14                               *eral Register that contain the text of the amend-*  
 15                               *ment, of any previous amendments and of the*  
 16                               *antitrust mutual assistance agreement that is so*  
 17                               *amended; and*

18                               (iii) *a description of the manner in which*  
 19                               *a copy of the antitrust mutual assistance agree-*  
 20                               *ment, as so amended, may be obtained from the*  
 21                               *Attorney General or the Commission.*

22       (d) *CONDITION FOR VALIDITY.*—An antitrust mutual  
 23       *assistance agreement, or an agreement that makes an*  
 24       *amendment to an antitrust mutual assistance agreement,*  
 25       *entered into in violation of subsection (a) or (b) shall not*

1 *be considered to be entered into under the authority of this*  
 2 *Act.*

3 ***SEC. 8. IMPLEMENTATION OF ANTITRUST MUTUAL ASSIST-***  
 4 ***ANCE AGREEMENTS.***

5 *(a) DETERMINATIONS.—The Attorney General or the*  
 6 *Commission may conduct an investigation under section 3*  
 7 *and may provide antitrust evidence to a foreign antitrust*  
 8 *authority, under an antitrust mutual assistance agreement,*  
 9 *only if the Attorney General or the Commission, as the case*  
 10 *may be, determines in the particular instance in which such*  
 11 *investigation or evidence is requested that—*

12 *(1) the foreign antitrust authority—*

13 *(A) will satisfy the assurances, terms, and*  
 14 *conditions required by subparagraphs (A), (B),*  
 15 *and (D) of section 12(2); and*

16 *(B) is capable of complying with and will*  
 17 *comply with the confidentiality requirements ap-*  
 18 *plicable under such agreement to the requested*  
 19 *antitrust evidence;*

20 *(2) providing the requested antitrust evidence*  
 21 *will not violate section 5; and*

22 *(3) conducting such investigation, or providing*  
 23 *the requested antitrust evidence, as the case may be,*  
 24 *is consistent with the public interest of the United*  
 25 *States, taking into consideration, among other factors,*

1        *whether the foreign state, or the regional economic in-*  
2        *tegration organization, represented by the foreign*  
3        *antitrust authority holds any proprietary interest*  
4        *that could benefit or otherwise be affected by such in-*  
5        *vestigation or by the provision of such antitrust evi-*  
6        *dence.*

7        *(b) LIMITATION ON DISCLOSURE OF CERTAIN ANTI-*  
8        *TRUST EVIDENCE.—Neither the Attorney General nor the*  
9        *Commission may disclose in violation of an antitrust mu-*  
10       *tual assistance agreement any antitrust evidence received*  
11       *under such agreement, except that such agreement may not*  
12       *prevent the disclosure of such antitrust evidence to a defend-*  
13       *ant in an action or proceeding brought by the Attorney*  
14       *General or the Commission for a violation of any of the*  
15       *Federal antitrust laws if such disclosure would otherwise*  
16       *be required by Federal law.*

17       *(c) REQUIRED DISCLOSURE OF NOTICE RECEIVED.—*  
18       *If the Attorney General or the Commission receives a notice*  
19       *described in section 12(2)(G), the Attorney General or the*  
20       *Commission, as the case may be, shall transmit such notice*  
21       *to the person that provided the evidence with respect to*  
22       *which such notice is received.*

1 **SEC. 9. LIMITATIONS ON JUDICIAL REVIEW**

2 (a) *DETERMINATIONS.*—*Determinations made under*  
 3 *section 8(a) (1) and (3) shall not be subject to judicial re-*  
 4 *view.*

5 (b) *ANTITRUST MUTUAL ASSISTANCE AGREEMENTS.*—  
 6 *Whether an antitrust mutual assistance agreement satisfies*  
 7 *the requirements specified in section 12(2) shall not be sub-*  
 8 *ject to judicial review under chapter 7 of title 5, United*  
 9 *States Code.*

10 (c) *RULE OF CONSTRUCTION.*—*Nothing in this section*  
 11 *affects the availability of judicial review under laws ref-*  
 12 *erenced in section 5.*

13 **SEC. 10. SUPPLEMENTATION AND PRESERVATION OF AU-**  
 14 **THORITY.**

15 (a) *SUPPLEMENTAL AUTHORITY.*—*The authority pro-*  
 16 *vided by this Act is in addition to, and not in lieu of, any*  
 17 *other authority vested in the Attorney General, the Commis-*  
 18 *sion, or any other officer of the United States.*

19 (b) *AUTHORITY PRESERVED.*—*This Act shall not mod-*  
 20 *ify or affect the allocation of responsibility between the At-*  
 21 *torney General and the Commission for the enforcement of*  
 22 *the Federal antitrust laws.*

23 **SEC. 11. REPORT TO THE CONGRESS.**

24 *In the 30-day period beginning 3 years after the date*  
 25 *of the enactment of this Act, the Attorney General, with the*  
 26 *concurrence of the Commission, shall submit, to the Speaker*



1 *of the House of Representatives and the President pro tem-*  
2 *pore of the Senate, a report—*

3 *(1) describing how the operation of this Act has*  
4 *affected the enforcement of the Federal antitrust laws;*

5 *(2) the extent to which foreign antitrust authori-*  
6 *ties have complied with the confidentiality require-*  
7 *ments applicable under antitrust mutual assistance*  
8 *agreements in effect under this Act;*

9 *(3) the number and identities of the foreign anti-*  
10 *trust authorities, foreign states, and regional eco-*  
11 *nom ic integration organizations that have entered*  
12 *into such agreements;*

13 *(4) the identity of each foreign state, and each*  
14 *regional economic integration organization, that has*  
15 *in effect a law similar to this Act;*

16 *(5) the approximate number of requests made by*  
17 *the Attorney General and the Commission under such*  
18 *agreements to foreign antitrust authorities for anti-*  
19 *trust investigations and for antitrust evidence;*

20 *(6) the approximate number of requests made by*  
21 *foreign antitrust authorities under such agreements to*  
22 *the Attorney General and the Commission for inves-*  
23 *tigations under section 3 and for antitrust evidence;*  
24 *and*

1           (7) a description of any significant problems or  
2           concerns of which the Attorney General or the Com-  
3           mission is aware with respect to the operation of this  
4           Act.

5   **SEC. 12. DEFINITIONS.**

6           For purposes of this Act:

7           (1) The term “antitrust evidence” means infor-  
8           mation, testimony, statements, documents, or other  
9           things obtained in anticipation of, or during the  
10          course of, an investigation or proceeding under any  
11          of the Federal antitrust laws or any of the foreign  
12          antitrust laws.

13          (2) The term “antitrust mutual assistance agree-  
14          ment” means a written agreement, or written memo-  
15          randum of understanding, that is entered into (i) be-  
16          tween the Attorney General and the Commission, and  
17          the foreign antitrust authority and such other agen-  
18          cies of a foreign state or regional economic integra-  
19          tion organization as may be necessary to carry out  
20          the agreement, or (ii) between the Government of the  
21          United States and a foreign state or regional eco-  
22          nomic integration organization, for the purpose of  
23          conducting investigations under section 3, or for pro-  
24          viding antitrust evidence, on a reciprocal basis and  
25          that includes the following:

1           (A) An assurance that the foreign antitrust  
2 authority will provide to the Attorney General or  
3 the Commission assistance that is comparable in  
4 scope to the assistance the Attorney General or  
5 the Commission provides under such agreement  
6 or such memorandum.

7           (B) An assurance that the foreign antitrust  
8 authority is subject to laws and procedures that  
9 are adequate to maintain the confidentiality of  
10 antitrust evidence that may be received under  
11 section 2, 3, or 4 and will give protection to  
12 antitrust evidence received under such section  
13 that is not less than the protection provided  
14 under the laws of the United States to such anti-  
15 trust evidence.

16           (C) Citations to, and brief descriptions of,  
17 the laws (including treaties, statutes, executive  
18 orders, and regulations) of the United States,  
19 and the laws (including treaties, statutes, execu-  
20 tive orders, and regulations) of the foreign state,  
21 or the regional economic integration organiza-  
22 tion, represented by the foreign antitrust author-  
23 ity, that protect the confidentiality of antitrust  
24 evidence that may be provided under such agree-  
25 ment or such memorandum. Such citations and

1        *such descriptions shall include the enforcement*  
2        *mechanisms and penalties applicable under such*  
3        *laws.*

4                *(D) Terms and conditions that specifically*  
5        *prohibit disclosing or using antitrust evidence*  
6        *received under such agreement or such memoran-*  
7        *dum, for any purpose other than the administra-*  
8        *tion or enforcement of the foreign antitrust laws*  
9        *involved unless, under special circumstances*  
10       *when such disclosure or use is essential to law*  
11       *enforcement and the evidence is not otherwise*  
12       *readily obtainable, the Attorney General or the*  
13       *Commission gives prior written consent to the*  
14       *disclosure or use of the antitrust evidence pro-*  
15       *vided under this Act for such other law enforce-*  
16       *ment purpose as may be specified by the foreign*  
17       *antitrust authority, subject to the other confiden-*  
18       *tiality requirements of this Act.*

19                *(E) An assurance that antitrust evidence re-*  
20       *ceived under section 2, 3, or 4 from the Attorney*  
21       *General or the Commission, and all copies of*  
22       *such evidence, in the possession or control of the*  
23       *foreign antitrust authority will be returned to*  
24       *the Attorney General or the Commission, respec-*  
25       *tively, at the conclusion of the foreign investiga-*

1        *tion or proceeding with respect to which such*  
2        *evidence was so received.*

3                *(F) Terms and conditions that specifically*  
4        *provide that such agreement or such memoran-*  
5        *dum will be terminated if—*

6                *(i) the confidentiality required under*  
7        *such agreement or such memorandum is*  
8        *violated with respect to antitrust evidence;*  
9        *and*

10               *(ii) adequate action is not taken both*  
11       *to minimize any harm resulting from the*  
12       *violation and to ensure that such confiden-*  
13       *tiality requirement is not violated again.*

14               *(G) Terms and conditions that specifically*  
15       *provide that if the confidentiality required under*  
16       *such agreement or such memorandum is violated*  
17       *with respect to antitrust evidence, notice of the*  
18       *violation will be given—*

19               *(i) by the foreign antitrust authority*  
20       *promptly to the Attorney General or the*  
21       *Commission with respect to antitrust evi-*  
22       *dence provided by the Attorney General or*  
23       *the Commission, respectively; and*

24               *(ii) by the Attorney General or the*  
25       *Commission to the person (if any) that pro-*

1                    *vided such evidence to the Attorney General*  
2                    *or the Commission.*

3                    (3) *The term “Attorney General” means the At-*  
4                    *torney General of the United States.*

5                    (4) *The term “Commission” means the Federal*  
6                    *Trade Commission.*

7                    (5) *The term “Federal antitrust laws” has the*  
8                    *meaning given the term “antitrust laws” in sub-*  
9                    *section (a) of the first section of the Clayton Act (15*  
10                    *U.S.C. 12(a)) but also includes section 5 of the Fed-*  
11                    *eral Trade Commission Act (15 U.S.C. 45) to the ex-*  
12                    *tent that such section 5 applies to unfair methods of*  
13                    *competition.*

14                    (6) *The term “foreign antitrust authority”*  
15                    *means a governmental entity of a foreign state or of*  
16                    *a regional economic integration organization that is*  
17                    *vested by such state or such organization with author-*  
18                    *ity to enforce the foreign antitrust laws of such state*  
19                    *or such organization.*

20                    (7) *The term “foreign antitrust laws” means the*  
21                    *laws of a foreign state, or of a regional economic inte-*  
22                    *gration organization, that are substantially similar to*  
23                    *any of the Federal antitrust laws and that prohibit*  
24                    *conduct similar to conduct prohibited under the Fed-*  
25                    *eral antitrust laws.*

1           (8) The term “person” has the meaning given  
 2           such term in subsection (a) of the first section of the  
 3           Clayton Act (15 U.S.C. 12(a)).

4           (9) The term “regional economic integration or-  
 5           ganization” means an organization that is con-  
 6           stituted by, and composed of, foreign states and in  
 7           which such foreign states have vested authority to  
 8           make decisions binding on such foreign states.

9   **SEC. 13. AUTHORITY TO RECEIVE REIMBURSEMENTS.**

10          The Attorney General and the Commission are author-  
 11          ized to receive from a foreign antitrust authority, a foreign  
 12          state, or a regional economic integration organization reim-  
 13          bursement in cash or in kind for the costs incurred by the  
 14          Attorney General or the Commission, respectively, to con-  
 15          duct investigations under section 3 or provide antitrust evi-  
 16          dence under a mutual assistance agreement.

S 2297 RS——2

S 2297 RS——3

S 2297 RS——4